

**TESTIMONY BEFORE
SENATE COMMITTEE ON STATE AFFAIRS
RELATING TO SB 4**

February 2, 2017



**JO ANNE BERNAL
EL PASO COUNTY ATTORNEY**

**County Courthouse
500 E. San Antonio
Room 503
El Paso, Texas 79901
(915) 546-2050
(915) 546-2133 Fax**

My name is Christina Sanchez and I serve as an Assistant County Attorney in El Paso County, Texas. I come here before you today on behalf of El Paso County Attorney Jo Anne Bernal to voice her strong opposition to the passage of SB 4. I have provided written testimony, which has been submitted to this Senate Committee.

SB 4 CONTRADICTS A FEDERAL SETTLEMENT AGREEMENT ENTERED INTO BY EL PASO COUNTY

- In 2006, El Paso County was sued in federal court by an individual claiming that El Paso County Sheriff's deputies were unlawfully enforcing federal immigration law. (First Amended Complaint, Attachment A)
- The basis of the lawsuit stemmed from an American citizen, the Plaintiff in the case, who was traveling by public bus, being detained by sheriff deputies for over 30 minutes while the deputy questioned passengers who appeared to be Mexican nationals on their immigration status.
- As a result of the incident, the Plaintiff argued Constitutional violations based on racial profiling by the Sheriff Deputies.
- The facts in that matter would have inevitably lead a jury to conclude that the basis for the stop and detainment was purely based on racial profiling.
- These facts are the underlying reason why El Paso County entered into a settlement agreement to memorialize a policy that prohibits El Paso County Sheriff deputies from enforcing federal civil immigration law and that require training to all its peace officers to help the officers understand the limits of their authority with respect to federal immigration law. (Settlement Agreement, Attachment B).
- This settlement agreement is consistent with all state and federal laws.
- What this settlement agreement means is that El Paso County may not detain or question victims, suspects, or witnesses while out in the field regarding their immigration status under any circumstance. With the various nuances of a person's immigration status, doing so would do nothing more than invite racial profiling lawsuits and drain Sheriff Office resources.
- I want to be clear that the settlement agreement in no way prevents ICE from reviewing arrest records at El Paso County Detention facilities or prohibits the Sheriff from sharing information with ICE officials.
- However, despite the El Paso County Sheriff's Office following the law and cooperating with federal authorities with the sharing of information, the additional burdens imposed by SB 4 places the El Paso County Commissioners between a rock and a hard place by

putting them in the position to violate the terms of the settlement agreement or violate State law.

- Following State law will undoubtedly ensure new costly litigation and monetary damages for El Paso County in a breach of contract claim for violating the terms of the settlement agreement. State law will not simply override the settlement agreement.

SB 4 WILL POTENTIALLY SUBJECT COUNTIES TO INCREASED LEGAL LIABILITIES

Racial Profiling Concerns

- In addition to the litigation that will ensue if the settlement agreement is not followed, all Texas counties are likely to see an increase in racial profiling lawsuits under 42 U.S.C. Section 1983.
- El Paso County is an over 80% Hispanic, mostly Mexican-American, community.
- The fact of racial profiling under the guise of immigration enforcement has been litigated again and again in our community, notably in *Murillo v. Musegades* and *Mendoza v. INS* – when U.S. citizens were targeted as undocumented immigrants.
- SB 4 targets undocumented immigrants on the US-Mexican border, almost all of which are Mexican nationals and visually indistinguishable from a person legally present in our community.
- SB 4 provides no guidance for local law enforcement officers to enforce federal immigration law nor is it likely that any local law enforcement official will be adequately trained in the complex web of immigration law.
- SB 4 would burden local law enforcement, deputies and officers not trained on federal immigration law, a law based on nationality, with identifying undocumented immigrants while at the same time avoiding racial profiling based on nationality.
- Under SB 4, every traffic stop has the potential for becoming an immigration stop, thus increasing the likelihood of civil rights violations against U.S. citizens or others who are legally present.

Limits Elected Official's Authority

- SB 4 infringes upon the right of every duly elected district or county attorney to adequately supervise his or her own personnel and to establish internal policies to ensure enforcement of Texas laws.

- SB 4 limits the Sheriff's authority to properly supervise his own employees as he sees fit and to promulgate policies and procedures to serve and protect all members of the El Paso community.
- Under SB 4, employees are authorized to decide on a case-by-case basis whom to question about immigration status, and it prohibits the constitutional office holder from establishing reasonable policies that could provide any guidance.
- By restricting their ability to institute internal policies regarding citizenship inquiries, SB 4 will increase the risk of incurring claims of retaliation by employees when they are disciplined for conduct that was placed within their discretion.
- SB 4 restricts district or county attorney's ability to train and supervise law enforcement officers who engage in the day to day operations out on the street, in an area of ever increasing public scrutiny and growing litigation.

SB 4 INTERFERES WITH A STATE PROSECUTOR'S DUTY TO PROTECT VICTIMS

- The Constitutional Duty of a State Prosecutor is to enforce the laws of the State of Texas regardless of the immigration status of the victim.
- The County Attorney's Office is statutorily responsible for obtaining legal protections on behalf of all victims of family violence, elder and child abuse- these, our most vulnerable members of a community.
- The law does not make distinctions between victims as undocumented or not, and our Constitutional oath does not limit our advocacy on these grounds either.
- It has been the experience of the County Attorney's Office that undocumented immigrants prefer not to report crimes if there is the slightest chance that contacting a law enforcement agency would risk immigration consequences.
- Passage of SB 4 fosters a subculture of victims who will remain in the shadows and will be victimized repeatedly by criminals who know that the undocumented immigrant will remain silent.
- El Paso has consistently been recognized as one of the safest cities in America. This is due in large part to local law enforcement agencies in El Paso County who have fostered a trusting relationship with the immigrant community that has empowered them to fight crime successfully.
- The County Attorney embraces the concept of community policy efforts and works together with law enforcement agencies to promote these efforts. In the County Attorney's opinion, SB 4 hinders appropriate community responses to emergencies and

obstructs her ability to successfully prosecute criminals and obtain relief for victims of domestic violence and child and elder abuse.

CONCLUSION

- The County Attorney is not opposed to reasonable legislation designed to provide for the safety and security of the El Paso community, however, SB 4 does neither of these. SB 4 will accomplish the opposite. SB 4 will result in costly litigation for Texas counties and undermines district and county attorneys' ability to protect vulnerable victims. It will foster a culture in which the criminal can avoid detection. Notably, the negative effect on our community is one that will come with a huge price that El Paso is ill equipped to afford. I urge defeat of SB 4.